UP/SP-390

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

Finance Docket No. 34079 203696

SAN JACINTO RAIL LIMITED -- AUTHORITY TO CONSTRUCT -- AND THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY -- AUTHORITY TO OPERATE -- PETITION FOR AN EXEMPTION FROM 49 U.S.C. § 10901 -- BUILD-OUT TO THE BAYPORT LOOP NEAR HOUSTON, HARRIS COUNTY, TEXAS

UNION PACIFIC RAILROAD COMPANY'S COMMENTS ON INFRASTRUCTURE AND SAFETY FOR THE BUILD-OUT TO THE BAYPORT LOOP

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Union Pacific Railroad Company ("UP") does not oppose petitioners' plans, described in the Petition for Exemption in Finance Docket No. 34079 ("Petition"), to build San Jacinto Rail Limited ("SJR") to UP's Bayport Loop. UP is concerned, however, that petitioners do not propose sufficient investments in Houston-area infrastructure to preserve rail service for customers and to guarantee safe operations. As UP has observed for more than three years, The Burlington Northern and Santa Fe Railway Company ("BNSF") has not invested adequately in Houston-area infrastructure, causing delays for Houston shippers and requiring undesirable operating practices. The Petition significantly understates traffic

on the build-out, which means that yet additional infrastructure will be needed to avoid new service problems. UP is hopeful that negotiations with BNSF will lead to appropriate solutions, but UP asks the Board to retain jurisdiction to resolve any disputes that may arise.

After reviewing the proposed build-out to UP's Bayport Loop, we explain in Part I that a conditional exemption is appropriate. In Part II, we describe why BNSF already needs more infrastructure in Houston. The build-out will require yet additional investments, particularly if one employs realistic traffic projections. We then follow the route of the build-out's rail traffic, discussing the infrastructure, operating, and safety concerns we plan to raise with BNSF. In Part III, we ask the Board to ensure that Houston's rail infrastucture is adequate for the rerouted traffic.

BACKGROUND

On August 30, 2001, BNSF and SJR sought an exemption from 49 U.S.C. § 10901 for their plan to construct a 12.8-mile rail line southeast of Houston, Texas. The new track is a build-out between UP's Galveston, Henderson & Houston ("GH&H") Line at Graham Siding and four customers on UP's Bayport Loop. Map No. 1, borrowed from the Petition, shows the proposed build-out. BNSF would acquire new trackage rights over the GH&H Line and use existing trackage rights over UP's Glidden Subdivision to connect SJR with the BNSF network at New South Yard in Houston. Map No. 2 shows these trackage rights.

Petitioners propose to construct SJR to provide competing rail service to shipping facilities on the former SP Bayport Loop. Petition, p. 2. The Bayport Loop serves one of the nation's largest concentrations of petrochemical plants with a striking skyline of silver towers. Industries on the loop generate some 600 carloads of petrochemicals and

plastics on a typical workday. Customers include some of the best-known names in American industry, such as Celanese, FMC, BASF, Goodyear, and Lubrizol.

According to the Petition, BNSF or a designated operator would operate over SJR between Graham Siding and an existing rail yard owned by the Bayport Rail Terminal. Bayport Rail Terminal would deliver cars to shippers and pick up outbound shipments. BNSF states that it initially expects the line to carry one train per day in each direction with 36 to 66 cars per train, presumably for the four shippers that are participating in SJR. Id. at 7. BNSF acknowledges that SJR's rail traffic would grow beyond this initial level. SJR would serve "a number of other present and future facilities as well." Id. at 5.

I. UP SUPPORTS A CONDITIONAL EXEMPTION

UP agrees with BNSF that the Board may conditionally exempt the build-out from the requirements of 49 U.S.C. § 10901. In 49 U.S.C. §§ 10101 and 10502, Congress established policies favoring reduced economic regulation of the railroads and liberal use of exemptions. New rail construction usually is consistent with national transportation policy and rarely requires economic regulation. As petitioners propose, the Board should grant the exemption, subject to preparation of an Environmental Impact Statement.

The proposal fulfills a condition imposed on the UP/SP merger to preserve pre-merger competition between SP and UP. Prior to the UP/SP merger, UP (or Bayport Loop shippers) could have proposed a line between UP's GH&H Line and customer facilities on SP's Bayport Loop in order to create new rail competition. In approving the UP/SP merger, the Board allowed BNSF to replicate this indirect competition by pursuing any build-out or build-in UP could have pursued before the merger. Union Pacific Corp., et al.--Control and Merger--Southern Pacific Rail Corp., et al., Decision No. 44, 1 S.T.B.

233, 420 (1996) ("Decision No. 44"). The Board placed BNSF into UP's shoes so that BNSF could pursue this opportunity exactly as UP could have absent the UP/SP merger.

The proposed build-out also exemplifies market-based competition in the rail industry. As the railroads have long maintained, the unregulated marketplace supports investments in competitive rail service where traffic volumes and revenues justify the investments. For example, UP and a predecessor railroad invested hundreds of millions of dollars to provide competitive rail service in the coal fields of the Wyoming's Powder River Basin. Various railroads plan additional build-outs in Texas, Arkansas, Illinois, and elsewhere.

Market-based competition as reflected in these build-outs is far superior to so-called "access" legislation or regulation, which some want the Government to impose on railroads. Government-imposed access would distort competition and destroy incentives to invest, because proponents want regulators to grant access at prices far below market levels. See Eric Beshers, Efficient Access Pricing for Rail Bottlenecks, Federal Railroad Administration (June 1, 2000). As the railroads have demonstrated, government-imposed access at below-market rates would cost the railroad industry billions of dollars and destroy its viability, ultimately requiring taxpayer funding to preserve rail service. See, e.g., Docket No. 41242, Central Power & Light Co. v. Southern Pacific Transportation Co., Comments of the Association of American Railroads (October 15, 1996).

II. HOUSTON'S RAILROADS MUST PROVIDE SUFFICIENT INFRASTRUCTURE TO ENSURE QUALITY SERVICE AND SAFE OPERATIONS

The lesson of UP's 1997-98 service crisis is that railroads must have sufficient, adequately maintained infrastructure to provide safe, quality service. As the

Board found in December 1998, the UP service crisis was caused primarily by SP's inadequate and deteriorated infrastructure:

> The emergency was caused in large measure by the inadequate infrastructure in the Houston area: the rail system in Houston has limited capacity, antiquated facilities, and an inefficient configuration unable to cope with surges in demand.

Service Order No. 1518, Joint Petition for Service Order; Ex Parte No. 573, Rail Service in the Western United States, Decision served Feb. 25, 1998, p. 4. Houston's railroads must not forget that lesson.

Warning flags are already up in Houston. BNSF never addressed the infrastructure shortages that UP identified three years ago, leaving shortfalls that cause significant delays for UP and BNSF customers alike. The build-out would accentuate these shortfalls and require additional investment, especially when one realizes that BNSF substantially understates its likely traffic to and from the Bayport Loop. The petitioners would reroute significant volumes of traffic, including hazardous materials, to new rail routes that are not yet configured to handle the additional traffic. At a number of specific locations, BNSF would need infrastructure that the Petition does not identify.

A. BNSF Should Address Existing Shortages of Rail Infrastructure in Houston

BNSF does not have adequate facilities in Houston to handle its existing traffic. UP first described this deficiency in a report to the Board in September 1998, after the UP service crisis ended. Indeed, UP believed during the service crisis that BNSF's lack of adequate freight yards in Houston contributed to and perpetuated the service crisis, but we concluded that it would be inappropriate for UP to complain when its own service was so

poor. BNSF has done little to address that shortfall.[1] Meanwhile, UP has invested hundreds of millions of dollars to upgrade and expand facilities in and around Houston.

BNSF's primary Houston freight yard, New South Yard, is the leading cause of rail delays in the Houston Terminal. It does not have enough tracks to accommodate BNSF's existing traffic. Because of New South Yard, UP warned in 1998 that BNSF needed "to invest in greater capacity in the Houston area."[2] More recently it described New South Yard as the "biggest cause of congestion in the Houston area."[3] BNSF has never disputed this.

In 1998, UP noted that New South Yard often could not accept BNSF trains on arrival. All freight yards hold movements outside the yard from time to time when traffic is unusually heavy. New South Yard's practice was and is chronic, reflecting the yard's inadequate capacity.[4]

Unable to enter the yard, BNSF movements block nearby mainlines and delay other movements on those tracks. BNSF operations frequently block the East Belt Line, the most heavily used rail line in Houston. See Map No. 2. BNSF trains from the south and BNSF intermodal trains often obstruct BNSF's Mykawa Subdivision, which UP must use to serve the Texas Gulf Coast south of Houston. BNSF trains occasionally block

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[1] Applicants Reply to Comments, UP/SP-361, Sept. 30, 1998, pp. 62-68.

[2] Id. at 63.

[3] UP's Report on Issues Arising Under the BNSF Settlement Agreement, UP/SP-385, July 2, 2001, p. 5.

[4] Applicants' Reply to Comments, UP/SP-361, Sept. 30, 1998, pp. 62-63.

the West Belt Line, an important route for UP trains. Even without the build-out, BNSF needs to invest in additional yard capacity in the Houston Terminal now.[5]

BNSF also has not added needed infrastructure at T&NO ("Texas & New Orleans") Junction, a busy rail crossing south of New South Yard. BNSF's Mykawa Subdivision between Houston and Galveston crosses UP's Glidden Subdivision at this junction.[6] UP called on BNSF to add a new connection at T&NO Junction more than three years ago,[7] but BNSF did not build it.

T&NO Junction is very busy. BNSF operates more than a dozen trains per day over its Mykawa Subdivision. UP exercises trackage rights on the Mykawa Subdivision, operating some 16 scheduled trains per day between Houston and the Texas Gulf Coast, along with numerous grain, rock, and extra trains. On a typical day, UP and BNSF also operate approximately 15 movements per day on the Glidden Subdivision east of T&NO Junction. BNSF uses trackage rights on this track to serve Port Terminal Railway Association at Pasadena and the Port of Houston at Barbours Point.

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[5] BNSF builds its long freight trains on one of the two Houston Belt & Terminal mainlines adjacent to the yard, delaying UP trains that use the mainlines to and from South Texas and Mexico. UP uses these mainlines for traffic moving to and from the Texas Gulf Coast south of Houston, including Freeport, Bloomington, Corpus Christi, and Brownsville, Texas. At UP's insistence, BNSF and UP are constructing a new main track adjacent to New South Yard and a switching lead at the north end of the yard. BNSF will build trains on the switching lead so that its trains do not block UP trains. This will not address the problem of inadequate yard capacity.

[6] Technically, BNSF's Mykawa Subdivision from Galveston to Houston ends at T&NO Junction. The mainline north of the junction belongs to the Houston Belt & Terminal Railway, which BNSF and UP jointly own and operate.

[7] Applicants' Reply to Comments, UP/SP-361, Sept. 30, 1998, p. 66.

T&NO Junction lacks connections that would permit trains to move efficiently between New South Yard and the Glidden Subdivision. As Map No. 4 shows, only one of four quadrants of this junction has a connecting track. All trains moving between New South Yard and the Glidden Subdivision must use the connection in the northwest quadrant, which requires many trains to back in or out of BNSF's yard. For example, trains moving from BNSF's New South Yard toward the east on UP's Glidden Subdivision must back out of New South Yard toward the west over the connecting track, come to a halt, then proceed eastward. BNSF trains moving westward on UP's Glidden Subdivision to New South Yard must proceed west beyond the junction, then back almost a mile into the yard.

These operating problems at T&NO Junction are greatly exacerbated because the junction lies atop a complex of intersecting Houston streets. T&NO Junction sprawls across three multi-lane roadways, crossing all of them at grade. Map No. 4 shows these roadways. Griggs Road enters the junction from the northeast and turns northwest, crossing the BNSF Mykawa Subdivision at grade. Long Drive enters the junction from the southeast and connects to Griggs Road after crossing both rail lines. Mykawa Road, which parallels the BNSF Mykawa Subdivision, enters the junction from the south and crosses Long Drive and the Glidden Subdivision before intersecting Griggs Road. The connecting track in the northwest quadrant of T&NO Junction runs through the intersection of Griggs Road and Long Drive. The railroads have experienced four grade crossing accidents at or within a half mile of this intersection thus far this year.

Trains between the Glidden Subdivision and New South Yard must shove their cars backwards through the road intersection at very low speed, causing delays and

raising concerns for the safety of motorists and employees. For example, a train moving northwest from the Glidden Subdivision to the BNSF yard must cross the BNSF Mykawa Subdivision, then cross Mykawa Road, then cross Long Drive. After stopping, the train must back up through the intersection of Griggs Drive and Long Drive to reach New South Yard. A train moving in the opposite direction creates the same risks. It must depart New South Yard backwards, backing all of its cars over Griggs Drive and Long Drive onto the Glidden Subdivision. After stopping, it proceeds east across Long Drive and Mykawa Road and then across the BNSF Mykawa Subdivision.

T&NO Junction lies adjacent to a major complex of City of Houston facilities in the economically disadvantaged neighborhood of Palm Center. Aligned on Griggs Road next to the junction are the Houston Community College at Palm Center, the Young Branch Library, and the Palm Center police substation. Vehicular traffic to and from these facilities, including police vehicles responding to emergencies, must wait while BNSF's lengthy trains back up through the intersection of Griggs Road and Long Drive.

Reverse movements of long trains across busy city streets are undesirable because they are less safe than movements with the locomotive in the lead. The engineer cannot see the track beyond the train and must rely on radio or visual signals from other crew members. Safety concerns are heightened when the train carries hazardous materials, as is typically the case for BNSF's movements through this junction. Three years ago, UP noted that BNSF's operation is "very awkward and potentially dangerous."[8]

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[8] Applicants' Reply to Comments, UP/SP-361, Sept. 30, 1998, p. 66.

These reverse movements are also undesirable because they consume large amounts of time. UP personnel recently observed BNSF train crews spending 40 minutes or more to complete one of these reverse movements. Throughout the movement, every mainline through the junction is blocked. Currently this happens about four times each day. The proposed build-out will require more reverse movements.

BNSF should solve these problems now by constructing a connection in the northeast quadrant of T&NO Junction.

B. The Build-Out Will Accentuate Existing Capacity Shortages

By rerouting rail traffic to and from the Bayport Loop, BNSF will add rail cars and rail movements to facilities that already need expansion. The pressure on these facilities will increase, delays will grow, and the risk of service failures will rise. We describe the specific areas requiring investment in subpart II.C. below.

These concerns are heightened because petitioners' projections of future SJR traffic are unrealistic. BNSF projects that it will operate only one train each way per day on the build-out, carrying approximately 36 to 66 cars. Petition, p. 7. But the Petition evidently projects rail traffic for only the four shippers on the Bayport Loop that are participating in the build-out and depicts only the rail lines that would serve their facilities. Petition, Mann V.S., p. 2.

The build-out could well attract several times as much rail traffic as these initial estimates suggest. As one of petitioners' maps indicates, SJR will pass near 19 additional shipper facilities on the Bayport Loop. Map No. 6. The Board must assume that, after spending over $81 million to build SJR, BNSF will act rationally by soliciting traffic from the other 19 shippers adjacent to SJR. The petition acknowledges this: BNSF expects

to provide service "over time, [to] other shippers that connect to the line." Petition, Farmer V.S., p. 3.

Bayport Loop shippers today generate approximately 600 cars of rail traffic every day. BNSF is likely to attract more than 33 to 66 cars per day of this traffic. Accordingly, BNSF would carry more traffic than petitioners state in the Petition. BNSF also would need to construct additional tracks in the Bayport Loop and at other locations to handle this traffic. Petition, pp. 6-7.

The Board's studies of the proposed build-out should be based on realistic traffic projections. BNSF's internal planning documents may provide more accurate estimates of expected traffic than the Petition discloses.

C. Rail Capacity Would Be Needed at Several Points

We offer a tour of BNSF's proposed route for Bayport Loop traffic. As we conduct this tour, we will describe the potential effects of build-out operations over this route on rail service and on other parties who may be affected. We will identify the infrastructure needs that UP plans to discuss with BNSF.

We begin at New South Yard, where BNSF will base its service to Bayport Loop shippers.[9] We then follow BNSF's proposed route to the Bayport Loop. We move south from New South Yard to T&NO Junction, then east over UP's Glidden Subdivision to Tower 30, and finally southeast over UP's GH&H Line to Graham Siding, where SJR will diverge from UP's tracks. We then discuss SJR's presence in the Bayport Loop. All of these points are shown on attached maps.

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[9] BNSF acquired New South Yard from Houston Belt & Terminal Railway as a result of the UP/SP merger.

1. New South Yard

Lacking track space to handle existing traffic, New South Yard cannot accommodate 33 to 66 additional cars in each direction every day (up to 132 cars per day) to and from the Bayport Loop. Moreover, as we have explained, the build-out will bring many more than 66 cars per day in each direction to New South Yard. New South Yard is incapable of accommodating a large share of UP's Bayport Loop traffic.

BNSF must do more than switch additional cars at New South Yard. Like UP, BNSF will be required to find space for additional Storage-In-Transit ("SIT") cars filled with plastics for which the shippers do not yet have buyers.[10] BNSF already often blocks mainline sidings on its Mykawa Subdivision with SIT cars, delaying BNSF and UP through trains.[11] Like UP, BNSF also will be required to find space for empty tank cars that shippers cannot accommodate at their facilities. For example, one Bayport Loop customer forces UP to squeeze hundreds of empty cars onto UP's tracks because the customer does not have room for them. Spur tracks near the Bayport Loop are jammed with cars. New South Yard does not have room for Bayport Loop traffic, more SIT cars, and more empty tank cars.

In negotiations with BNSF, UP will seek assurances that BNSF plans to invest in yard capacity sufficient to avoid blocking tracks that UP and other railroads use in

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[10] UP generally holds over 7,000 SIT cars for plastics shippers in the Houston area.

[11] UP noted three years ago that BNSF blocks mainline sidings near Houston with SIT cars. Applicants' Reply to Comments, UP/SP-361, Sept. 30, 1998, p. 66. By reducing BNSF's mainline capacity, this practice delays UP trains that use those mainlines. BNSF's practice is extremely inefficient, because it requires train crews to switch each siding from the mainline to remove individual cars from the storage tracks, delaying other trains. This practice contributed to SP service failures before the UP/SP merger.

the Houston Terminal. Both railroads have strong incentives to avoid any repetition of UP's service crisis.

2. T&NO Junction

Based on BNSF's operating plan, every movement to and from Bayport Loop will perform the undesirable reverse movements at T&NO Junction. As a result, additional long trains carrying hazardous materials will shove backwards across city streets at this busy junction. Motorists will suffer longer delays at grade crossings and may be tempted to ignore crossing protections. UP and BNSF trains will be delayed while more BNSF trains back through the junction.

Before beginning operations on the build-out, BNSF should construct the new connection in the northeast quadrant. The new connection would allow BNSF trains to move smoothly between the Glidden Subdivision and New South Yard without a reverse movement across Houston city streets and two mainline tracks.

3. T&NO Junction to Tower 30

BNSF and UP should determine whether additional BNSF traffic will delay movements on this three-mile segment of UP's Harrisburg Line. BNSF is the primary user of this line, so BNSF's trains will suffer most of the additional delays, but UP service will also be affected. UP typically operates six weekday movements over this segment. Four serve industries west of T&NO Junction and on adjoining industry tracks. Two serve a sugar plant at Sugarland, Texas. UP plans to work with BNSF to determine the impact of BNSF's additional operations on UP service and consider whether new capacity is needed.

BNSF may wish to use an alternative route between Tower 30 and New South Yard. BNSF may desire to operate Bayport Loop trains from Tower 30 northwest to Tower 85 and then southwest to New South Yard. See Map No. 2

BNSF does not have permanent trackage rights over the UP segment of this route connecting Tower 85 and Tower 30 in Houston. UP granted BNSF only temporary trackage rights over this segment during the 1997-1998 service crisis. UP is willing to allow BNSF to continue to use that segment for existing volumes of traffic. If BNSF wants to expand its use, however, BNSF should negotiate with UP to identify new capacity for this route.

4. The GH&H Line

BNSF plans to operate all Bayport Loop trains over UP's GH&H Line between Tower 30 and Graham Siding, a distance of about 13 miles. This segment has no long sidings where trains can meet and no signals to control train movements. [12] Because of a 20 m.p.h. speed limit and lack of signals, trains require more than 45 minutes to cover the 13-mile segment BNSF expects to use. One train usually must wait for another to cover the entire distance before it can advance.

The GH&H Line carries substantial numbers of UP trains and cannot absorb additional trains without delaying UP service. UP operates the following trains over the GH&H Line:

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[12] Harrisburg Siding, only 3,000 feet long, cannot hold full trains. Two roads cross it, and trains cannot block those roads for long periods. T&T Siding is even shorter, and UP uses it for car storage. Unit rock trains occupy Genoa Siding almost continuously. The shipper unloads from the siding.

- Local train LHB 89 six days per week from Englewood Yard in Houston to Galveston
- Local train LHB 49 six days per week from Galveston to Strang Yard
- Local train LHB 37 five days per week from Galveston to Sugarland, Texas, and return. (Sugarland is west of T&NO Junction on the Glidden Subdivision.)
- A local switch engine five days per week from Webster, Texas, operating in both directions over most of the line
- Three trains per week of SIT cars to Galveston, where UP stores the cars awaiting movement instructions
- Two unit rock trains to and from Genoa Siding
- Two to three unit grain trains per week in each direction serving the Port of Galveston
- One or two unit sulfur trains per week in each direction serving the Port of Galveston

In aggregate, UP operates eight to nine trains per day over this low-speed, unsignalled line. Delays are common. Additional BNSF trains would add more delay. BNSF would need to lengthen or add a siding on this segment to avoid unacceptable delays to UP trains serving UP customers. BNSF and UP would need to adopt a rail traffic control system for this segment. This traffic control system would need to extend sufficiently south of Graham Siding to allow dispatchers to hold northbound UP trains at locations where they would not block street crossings.

BNSF would also need to install two powered switches at Graham Siding, where Bayport Loop trains will enter and leave the GH&H Line. One switch would control the north end of the siding, the other the junction between the siding and SJR. Without powered switches, train crews entering and leaving the GH&H Line will be required to stop, reposition a switch manually, operate through the connection, reposition the switch

manually, and then walk a long train to reach the locomotive. This procedure would delay other trains on the GH&H Line. In addition, roadways cross Graham Siding. Without a power switch, BNSF trains would block those roadways for unacceptable periods while train crews manipulate the manual switches.

BNSF would become a principal user of a new connection that UP constructed in the southwest quadrant of Tower 30 in 1999. See Map No. 5. If it becomes the primary user, BNSF should contribute to the costs of this $1.5 million connection.

5. The Bayport Loop

Petitioners' maps show that SJR would cross UP tracks at up to a dozen locations on the Bayport Loop. Map No. 6 depicts these crossings. To serve any of the 19 additional shippers on the Loop, SJR must construct additional tracks and additional crossings. At almost every shipping facility, SJR would cross UP's access tracks. UP anticipates a dozen or more additional crossings as SJR reaches out to additional customers.

Bayport Loop operations are already complex, and the new SJR crossings and operations would complicate them further. At each crossing, one railroad's movements may block the other's movements. UP and SJR or its agent would need to choreograph their transportation plans to avoid conflicts at these crossings and in serving shipper facilities. With appropriate infrastructure and coordinated dispatching, UP and SRJ or its agent carrier can operate safely. UP will work with BNSF to identify the requirements.

III. THE BOARD SHOULD ENSURE THAT THE RAILROADS PROVIDE ADEQUATE RAIL INFRASTRUCTURE FOR BAYPORT LOOP TRAFFIC

UP is hopeful that BNSF and UP can negotiate arrangements for the build-out without further Board involvement. UP pledges to cooperate with BNSF in crossing

UP's tracks.[13] We will work with BNSF to identify and implement infrastructure enhancements to ensure that both railroads avoid service problems and operate safely.

The Board should remain available to protect rail service in Houston if the railroads are unable to reach agreement. The Board can do so in the UP/SP proceeding, where it reserved limited jurisdiction to oversee implementation of its build-in/build-out condition. The Board stated in Decision No. 44 that "any technical disputes with respect to the implementation of this build-in/build-out remedy may be resolved either by arbitration or by the Board." Decision No. 44, 1 S.T.B. at 420. In overseeing the UP/SP merger, the Board has been especially vigilant to ensure that railroads invest in sufficient infrastructure in the Houston terminal to prevent any recurrence of the service problems of 1997 and 1998. Service Order No. 1518, Joint Petition for Service Order; Ex Parte No. 573, Rail Service in the Western United States, Decision served Feb. 25, 1998. It should maintain that vigilance.

The Board may also consider the effects of build-out operations when it prepares the Environmental Impact Statement for the proposed build-out. In studying the environmental effects of the UP/SP and Conrail transactions, for example, the Board considered many effects of rerouting rail traffic, such as delays to vehicular traffic at grade crossings and risks of handling hazardous materials. It may do so here.

CONCLUSION

UP will not attempt to delay the Bayport Loop build-out. At the same time, BNSF should invest in infrastructure sufficient to neutralize the adverse effects of the build-

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[13] The Board sometimes must address attempts by an incumbent carrier to block a new carrier from crossing its lines or to require a premium for the crossing. UP will not interpose such obstacles to the build-out.

out on Houston shippers and on UP's neighbors and employees. UP hopes that BNSF will do so, and UP will work with BNSF to identify appropriate projects and operating arrangements. Meanwhile, we ask the Board to retain jurisdiction over the build-out should our efforts be unsuccessful.

Respectfully submitted,

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October 9, 2001

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

I, Dennis J. Duffy, Executive Vice President-Operations of Union Pacific Railroad Company, state that the information set forth in Union Pacific Railroad's Comments on Infrastructure and Safety for the Build-Out to the Bayport Loop in STB Finance Docket Nos. 32760 and 34079 was compiled by me or individuals under my supervision, that I know its contents, and that to the best of my knowledge and belief those contents are true as stated.

Dennis J. Duffy

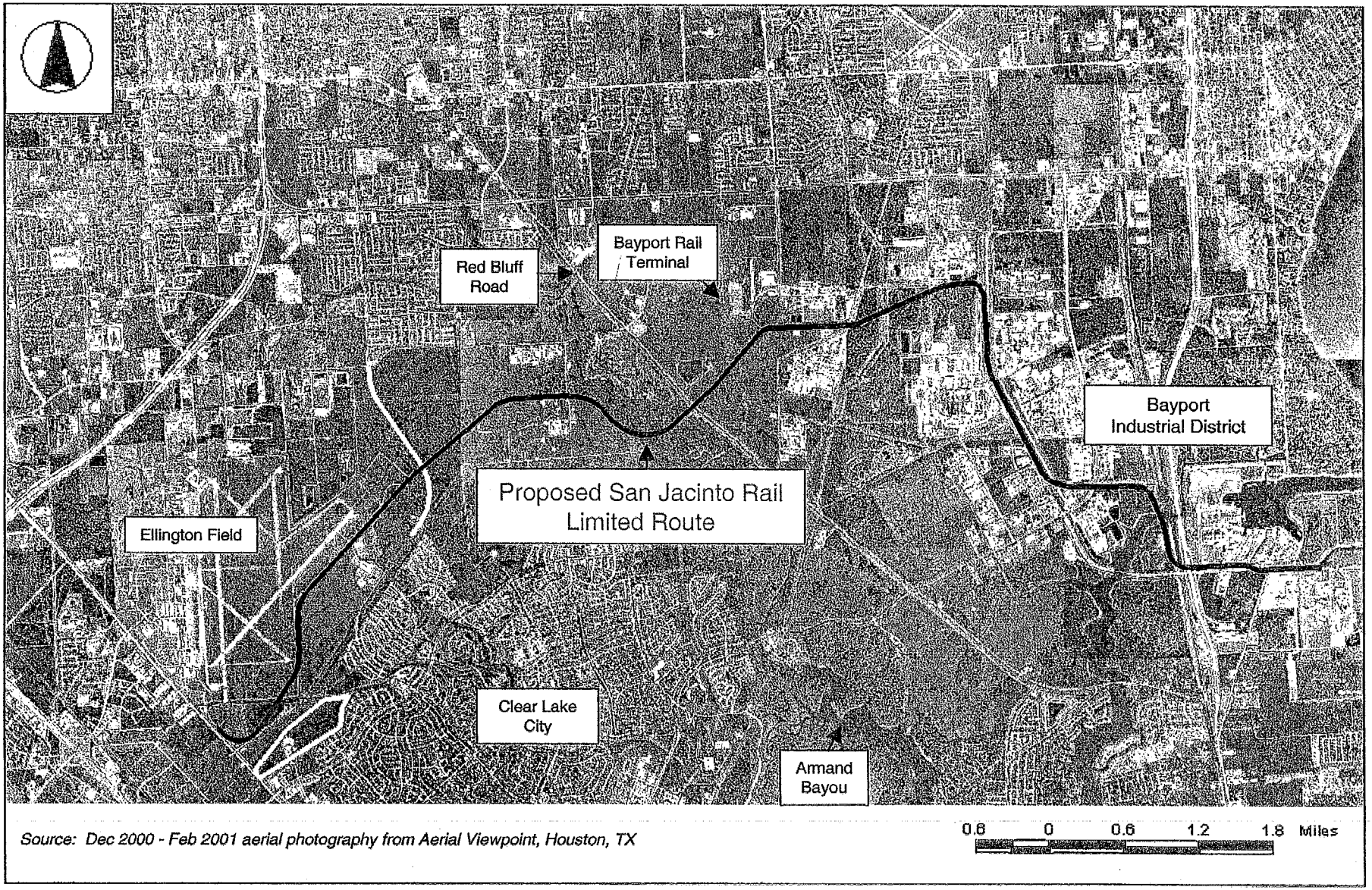
SUBSCRIBED and sworn to before me by
Dennis J. Duffy this 28 day of September 2001.

Beverly A. Meeks
Notary Public

GENERAL NOTARY-State of Nebraska
BEVERLY A. MEEKS
My Comm. Exp. Sept. 2, 2003

UP Map No. 1

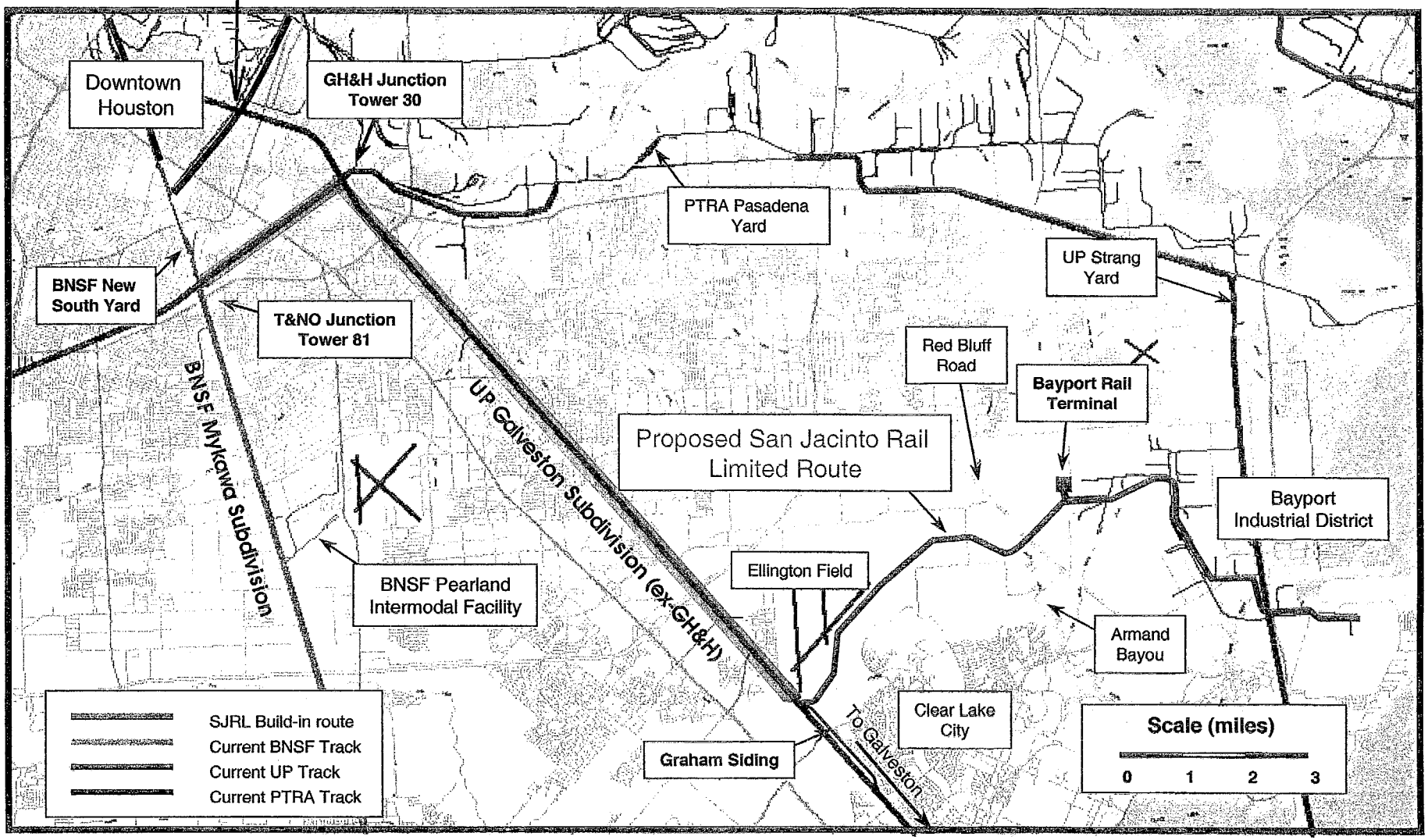
BAYPORT LOOP INDUSTRIAL BUILD-IN



Source: Dec 2000 - Feb 2001 aerial photography from Aerial Viewpoint, Houston, TX

HOUSTON AREA LINES

UP Map No. 2



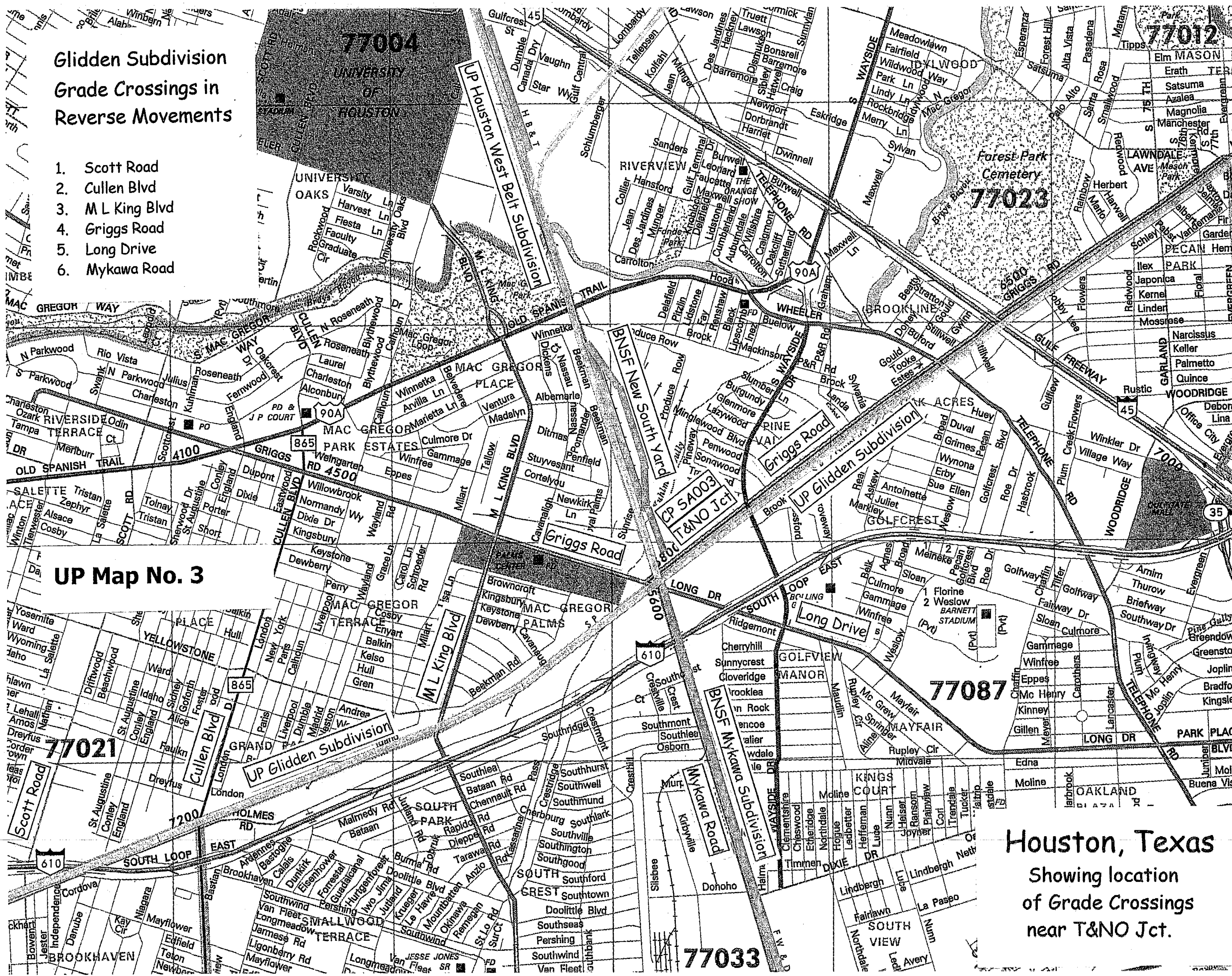
Houston, Texas

Showing location of Grade Crossings near T&NO Jct.

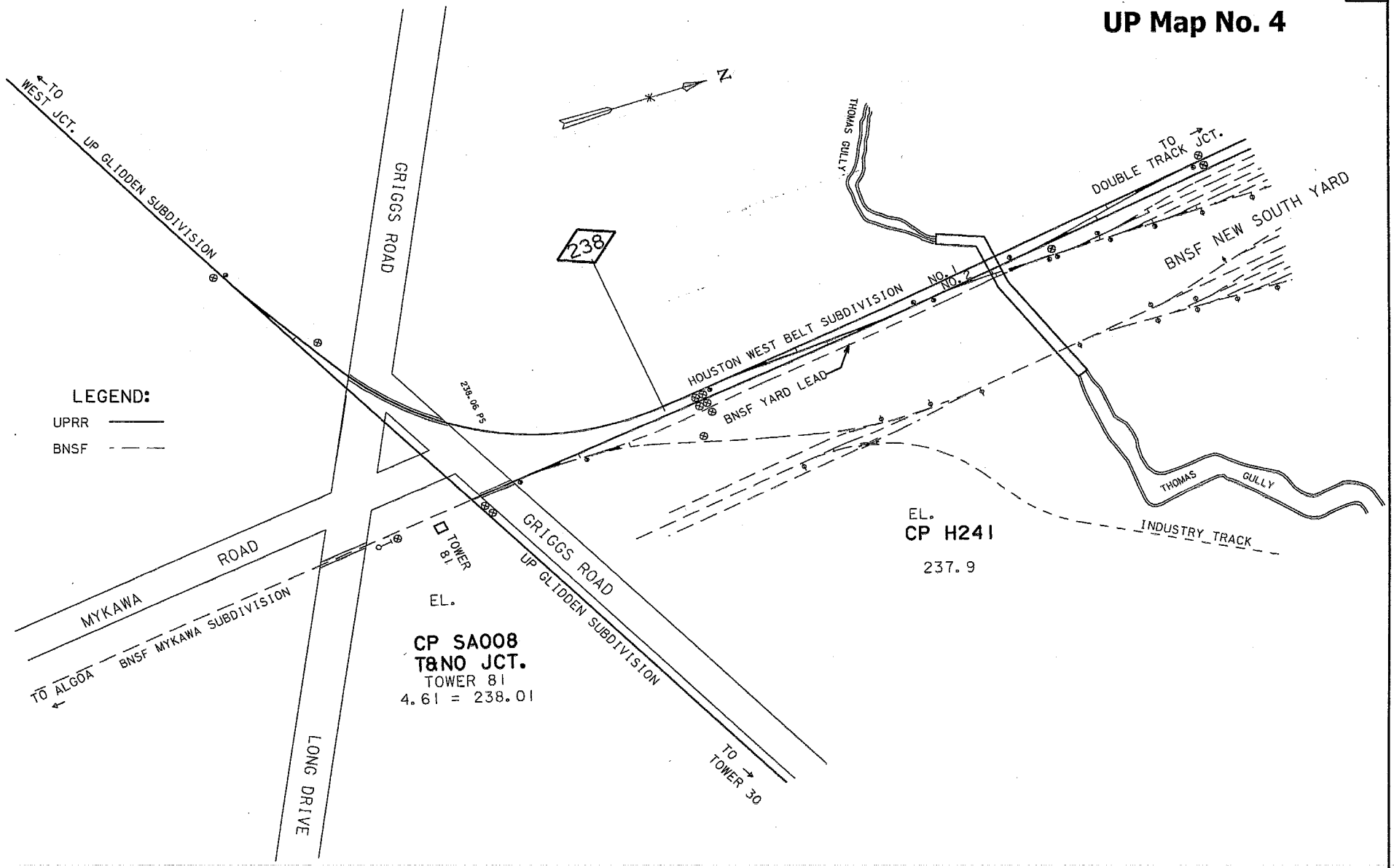
UP Map No. 3

Glidden Subdivision Grade Crossings in Reverse Movements

1. Scott Road
2. Cullen Blvd
3. M L King Blvd
4. Griggs Road
5. Long Drive
6. Mykawa Road



UP Map No. 4



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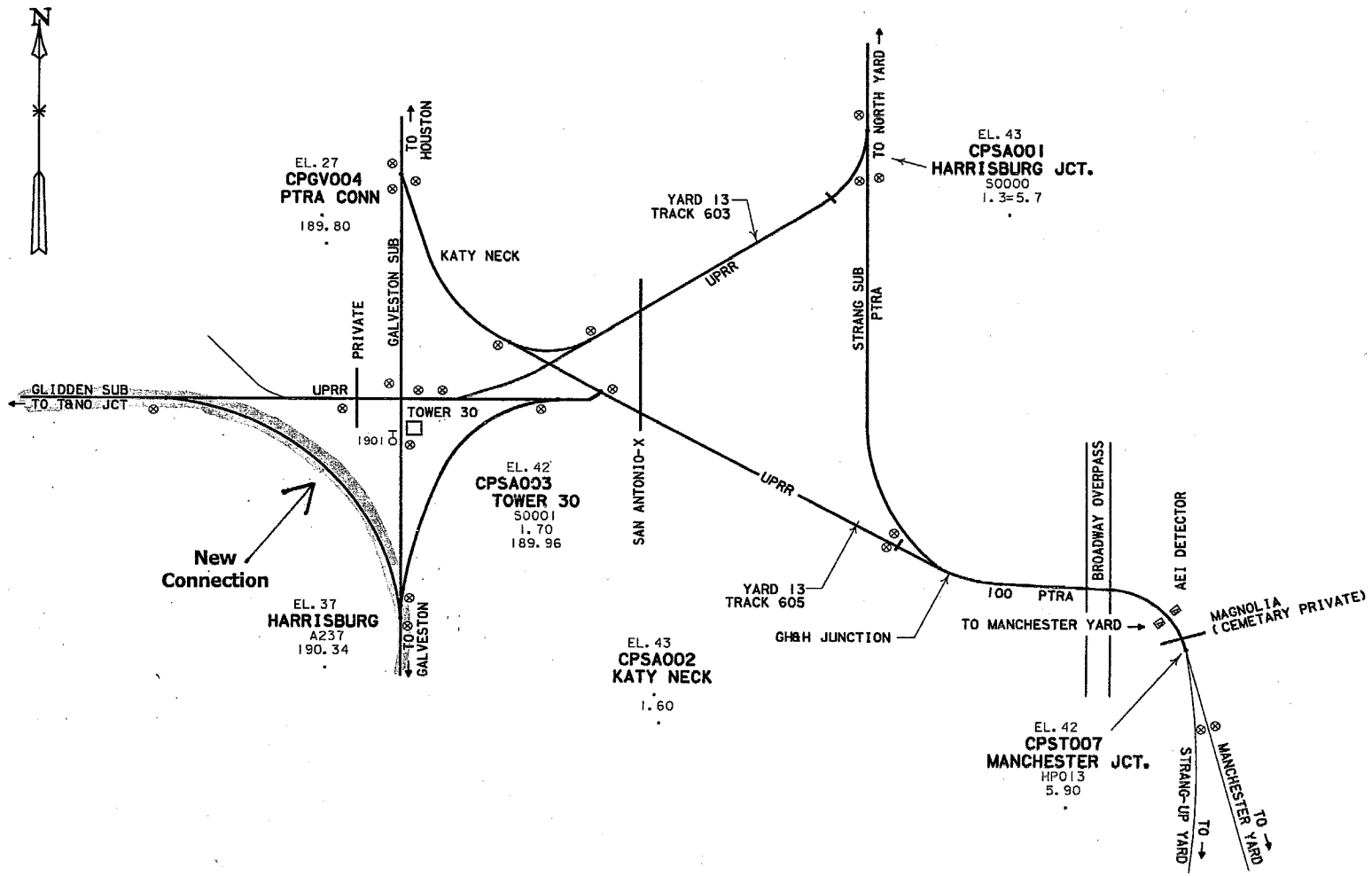
UP Map No. 5



PTRA-HARRISBURG JCT, GH&H JCT AND MANCHESTER JCT
UPRR-TOWER 30 AND KATY NECK

bhw

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BNSF Trackage Rights on UP

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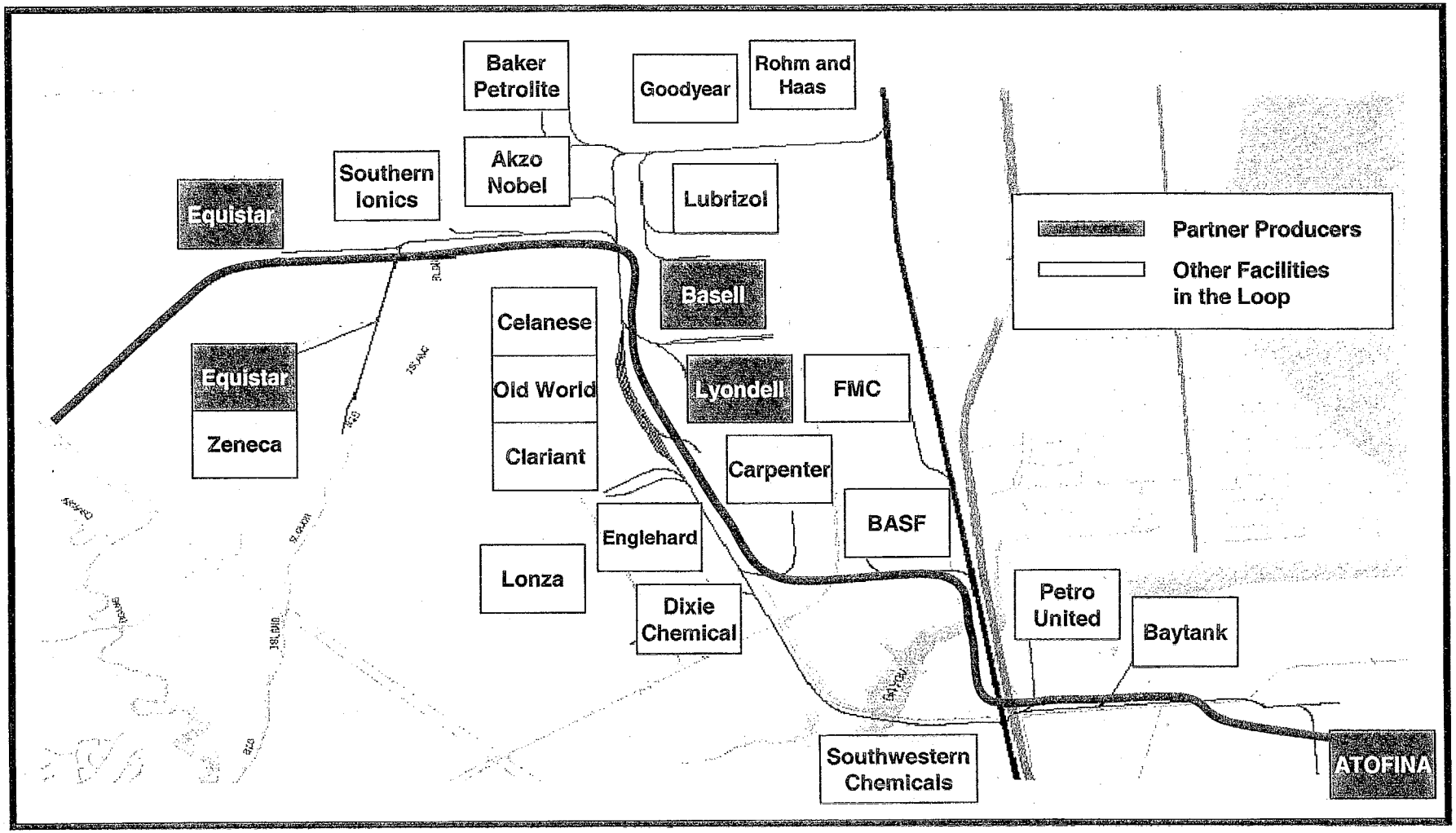
UP Map No. 6

BAYPORT LOOP SHIPPER FACILITIES



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of October 2001 a copy of the foregoing Union Pacific Railroad Company's Comments on Infrastructure and Safety for the Build-Out to the Bayport Loop was delivered to counsel for BNSF by hand and mailed, postage prepaid, to all other parties of record in Finance Docket No. 32760 (Sub No. 21) and Finance Docket No. 34079.

J. Michael Hemmer